

SENATE BILL NO. 87

INTRODUCED BY ELLIOTT

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT PROPERTY TAXES OR FEES ON CENTRALLY ASSESSED PROPERTY MUST BE PAID UNDER PROTEST IN ORDER FOR THE TAXPAYER TO RECEIVE A REFUND OR CREDIT OF THE PROPERTY TAXES; REQUIRING THAT THE PROTESTED PAYMENT BE REPORTED TO THE DEPARTMENT OF REVENUE; ESTABLISHING A CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND FOR THE DEPOSIT OF 50 PERCENT OF THE PROTESTED STATE PROPERTY TAXES HELD IN RESERVE; PROVIDING THAT THE DEPARTMENT OF REVENUE AND NOT THE STATE TREASURER RECEIVE AND DISBURSE PROTESTED PROPERTY TAX PAYMENTS; PROVIDING FOR THE DISBURSEMENT OF FUNDS UPON COMPLETION OF A PROTEST ACTION; TRANSFERRING FROM THE GENERAL FUND TO THE CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND 50 PERCENT OF THE MONEY RECEIVED BY THE DEPARTMENT OF REVENUE FROM PAYMENTS OF PROPERTY TAXES OR FEES UNDER PROTEST; AMENDING SECTIONS 15-1-402 AND 15-23-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

~~(a)~~(i) be made to the officer designated and authorized to collect it;

~~(b)~~(ii) specify the grounds of protest; and

~~(c)~~(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to

15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. BY NOVEMBER 1 OF EACH YEAR, THE DEPARTMENT SHALL MAIL A NOTICE STATING THE REQUIREMENTS OF THIS SUBSECTION (1)(C) TO OWNERS OF PROPERTY SUBJECT TO CENTRAL ASSESSMENT UNDER 15-23-101(1) AND (2) WHO HAVE FILED A TIMELY APPEAL UNDER 15-1-211.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101 (1) OR (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the ~~state treasurer~~ department.

(ii) The ~~state treasurer~~ department shall deposit 50% of that portion of the funds levied FOR THE UNIVERSITY SYSTEM pursuant to 15-10-107 in the state special revenue fund TO THE CREDIT OF THE UNIVERSITY SYSTEM, and the other 50% of the funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) ~~The Fifty percent of the remainder~~ of the funds REMAINING AFTER THE DEPOSIT OF UNIVERSITY SYSTEM FUNDS must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed

1 property tax state special revenue fund.

2 (5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by
3 the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved
4 may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion
5 of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the
6 protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does
7 not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the
8 first-year protest amount.

9 (b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on
10 property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest
11 remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing
12 jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a
13 taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude
14 it from demanding in a subsequent year any or all of the payments to which it is entitled.

15 (6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not
16 commenced within the time specified or if the action is commenced and finally determined in favor of the
17 department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the
18 protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed
19 property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax
20 belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses
21 charged to the local government units.

22 (b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the
23 treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the
24 final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to
25 the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or
26 fee that the person holding the judgment is entitled to recover, together with interest from the date of payment
27 under protest.

28 (ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund
29 provided for in 17-6-203 for the applicable period.

30 (c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the

1 treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

2 (d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the
3 protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which
4 local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the
5 treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction
6 is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state
7 treasurer as provided in subsection (6)(b).

8 (ii) For an adverse protest action against the state for centrally assessed property, the ~~state treasurer~~
9 department shall refund from the centrally assessed property tax state special revenue fund the amount of
10 protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The
11 amount refunded for an adverse protested action from the centrally assessed property tax state special revenue
12 fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to
13 subsection SUBSECTIONS (4)(b)(ii) AND (4)(B)(III) or, for taxes or fees protested prior to [the effective date of this
14 act], an equivalent amount of the money transferred to the fund pursuant to [section 3]. If the amount available
15 for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient
16 to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the
17 department shall pay the remainder of the refund proportionally from the state general fund and from money
18 deposited in the state special revenue fund levied pursuant to 15-10-107.

19 (e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is
20 allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The
21 taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of
22 payment under protest until the date of final resolution of the protest and at the combined rate of the federal
23 reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final
24 resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

25 (7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds
26 from one or more of the following sources:

27 (a) imposition of a property tax to be collected by a special tax protest refund levy;

28 (b) the general fund or any other funds legally available to the governing body; and

29 (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving
30 revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city,

or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed."

Section 2. Section 15-23-116, MCA, is amended to read:

"15-23-116. Statute of limitations. (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) Except as provided in subsection (3), a refund or credit may not be allowed or paid unless the taxpayer has paid the tax under protest as provided by 15-1-402.

~~(3) No refund or credit may be allowed or paid with respect to the year for which a return is filed after If the department determines that the taxpayer has made an overpayment, the department shall refund or credit the overpayment if the overpayment was discovered within 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.~~

~~(3)(4)~~ (4) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department."

NEW SECTION. **Section 3. Fund transfer.** Fifty percent of the property tax or fee protest money held

1 pursuant to 15-1-402(4)(b) on [the effective date of this act], but not more than \$4 million for protested taxes
2 deposited in the state general fund, is transferred to the centrally assessed property tax state special revenue
3 fund from the state general fund and from funds in the state special revenue fund levied pursuant to 15-10-107.

4
5 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

6 - END -